

Effective 5/12/2015

31A-23a-402 Unfair marketing practices -- Communication -- Unfair discrimination -- Coercion or intimidation -- Restriction on choice.

- (1)
 - (a)
 - (i) Any of the following may not make or cause to be made any communication that contains false or misleading information, relating to an insurance product or contract, any insurer, or any licensee under this title, including information that is false or misleading because it is incomplete:
 - (A) a person who is or should be licensed under this title;
 - (B) an employee or producer of a person described in Subsection (1)(a)(i)(A);
 - (C) a person whose primary interest is as a competitor of a person licensed under this title; and
 - (D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).
 - (ii) As used in this Subsection (1), "false or misleading information" includes:
 - (A) assuring the nonobligatory payment of future dividends or refunds of unused premiums in any specific or approximate amounts, but reporting fully and accurately past experience is not false or misleading information; and
 - (B) with intent to deceive a person examining it:
 - (I) filing a report;
 - (II) making a false entry in a record; or
 - (III) wilfully refraining from making a proper entry in a record.
 - (iii) A licensee under this title may not:
 - (A) use any business name, slogan, emblem, or related device that is misleading or likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee already in business; or
 - (B) use any name, advertisement or other insurance promotional material that would cause a reasonable person to mistakenly believe that a state or federal government agency, including the Health Insurance Exchange, also called the "Utah Health Exchange" or "Avenue H," created in Section 63N-11-104, the Comprehensive Health Insurance Pool created in Chapter 29, Comprehensive Health Insurance Pool Act, and the Children's Health Insurance Program created in Title 26, Chapter 40, Utah Children's Health Insurance Act:
 - (I) is responsible for the insurance sales activities of the person;
 - (II) stands behind the credit of the person;
 - (III) guarantees any returns on insurance products of or sold by the person; or
 - (IV) is a source of payment of any insurance obligation of or sold by the person.
 - (iv) A person who is not an insurer may not assume or use any name that deceptively implies or suggests that person is an insurer.
 - (v) A person other than persons licensed as health maintenance organizations under Chapter 8, Health Maintenance Organizations and Limited Health Plans, may not use the term "Health Maintenance Organization" or "HMO" in referring to itself.
 - (b) A licensee's violation creates a rebuttable presumption that the violation was also committed by the insurer if:
 - (i) the licensee under this title distributes cards or documents, exhibits a sign, or publishes an advertisement that violates Subsection (1)(a), with reference to a particular insurer:
 - (A) that the licensee represents; or
 - (B) for whom the licensee processes claims; and

- (ii) the cards, documents, signs, or advertisements are supplied or approved by that insurer.
- (2)
- (a) A title insurer, individual title insurance producer, or agency title insurance producer or any officer or employee of the title insurer, individual title insurance producer, or agency title insurance producer may not pay, allow, give, or offer to pay, allow, or give, directly or indirectly, as an inducement to obtaining any title insurance business:
 - (i) any rebate, reduction, or abatement of any rate or charge made incident to the issuance of the title insurance;
 - (ii) any special favor or advantage not generally available to others;
 - (iii) any money or other consideration, except if approved under Section 31A-2-405; or
 - (iv) material inducement.
 - (b) "Charge made incident to the issuance of the title insurance" includes escrow charges, and any other services that are prescribed in rule by the Title and Escrow Commission after consultation with the commissioner and subject to Section 31A-2-404.
 - (c) An insured or any other person connected, directly or indirectly, with the transaction may not knowingly receive or accept, directly or indirectly, any benefit referred to in Subsection (2)(a), including:
 - (i) a person licensed under Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act;
 - (ii) a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act;
 - (iii) a builder;
 - (iv) an attorney; or
 - (v) an officer, employee, or agent of a person listed in this Subsection (2)(c)(iii).
- (3)
- (a) An insurer may not unfairly discriminate among policyholders by charging different premiums or by offering different terms of coverage, except on the basis of classifications related to the nature and the degree of the risk covered or the expenses involved.
 - (b) Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, blanket, or franchise policy, and the terms of those policies are not unfairly discriminatory merely because they are more favorable than in similar individual policies.
- (4)
- (a) This Subsection (4) applies to:
 - (i) a person who is or should be licensed under this title;
 - (ii) an employee of that licensee or person who should be licensed;
 - (iii) a person whose primary interest is as a competitor of a person licensed under this title; and
 - (iv) one acting on behalf of any person described in Subsections (4)(a)(i) through (iii).
 - (b) A person described in Subsection (4)(a) may not commit or enter into any agreement to participate in any act of boycott, coercion, or intimidation that:
 - (i) tends to produce:
 - (A) an unreasonable restraint of the business of insurance; or
 - (B) a monopoly in that business; or
 - (ii) results in an applicant purchasing or replacing an insurance contract.
- (5)
- (a)
 - (i) Subject to Subsection (5)(a)(ii), a person may not restrict in the choice of an insurer or licensee under this chapter, another person who is required to pay for insurance as a condition for the conclusion of a contract or other transaction or for the exercise of any right under a contract.

- (ii) A person requiring coverage may reserve the right to disapprove the insurer or the coverage selected on reasonable grounds.
- (b) The form of corporate organization of an insurer authorized to do business in this state is not a reasonable ground for disapproval, and the commissioner may by rule specify additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from declining an application for insurance.
- (6) A person may not make any charge other than insurance premiums and premium financing charges for the protection of property or of a security interest in property, as a condition for obtaining, renewing, or continuing the financing of a purchase of the property or the lending of money on the security of an interest in the property.
- (7)
 - (a) A licensee under this title may not refuse or fail to return promptly all indicia of agency to the principal on demand.
 - (b) A licensee whose license is suspended, limited, or revoked under Section 31A-2-308, 31A-23a-111, or 31A-23a-112 may not refuse or fail to return the license to the commissioner on demand.
- (8)
 - (a) A person may not engage in an unfair method of competition or any other unfair or deceptive act or practice in the business of insurance, as defined by the commissioner by rule, after a finding that the method of competition, the act, or the practice:
 - (i) is misleading;
 - (ii) is deceptive;
 - (iii) is unfairly discriminatory;
 - (iv) provides an unfair inducement; or
 - (v) unreasonably restrains competition.
 - (b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the Title and Escrow Commission shall make rules, subject to Section 31A-2-404, that define an unfair method of competition or unfair or deceptive act or practice after a finding that the method of competition, the act, or the practice:
 - (i) is misleading;
 - (ii) is deceptive;
 - (iii) is unfairly discriminatory;
 - (iv) provides an unfair inducement; or
 - (v) unreasonably restrains competition.

Amended by Chapter 244, 2015 General Session
Amended by Chapter 283, 2015 General Session